



Reprinted  
February 26, 2004

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## ENGROSSED HOUSE BILL No. 1050

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DIGEST OF HB 1050 (Updated February 25, 2004 4:55 pm - DI 108)

**Citations Affected:** IC 36-7.

**Synopsis:** Local planning and zoning. Eliminates two members of the Indianapolis metropolitan development commission, including a member appointed by the mayor and a member who represents township legislative bodies. Provides that certain members of certain county plan commissions, metropolitan plan commissions, area plan commissions, and boards of zoning appeals either: (1) reside in an unincorporated area; or (2) own real property located in an unincorporated area. (Current law requires that certain members reside in an unincorporated area.) Requires the county commissioners (rather than the area plan commission) to appoint the executive director of the planning department in a county that does not contain a second class city. Repeals a provision allowing a township in Marion County to require that a plan commission hold a public hearing within the township before an amendment to a zoning map may be made.

**Effective:** July 1, 2004.

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**Hinkle, Bardon**

(SENATE SPONSOR — CLARK)

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January 13, 2004, read first time and referred to Committee on Local Government.

January 29, 2004, reported — Do Pass.

February 2, 2004, read second time, ordered engrossed.

February 3, 2004, engrossed.

February 5, 2004, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 9, 2004, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

February 19, 2004, amended, reported favorably — Do Pass.

February 25, 2004, read second time, amended, ordered engrossed.

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EH 1050—LS 6510/DI 108+



Reprinted  
February 26, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1050

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 36-7-4-207 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 207. (a) ADVISORY.  
3 In a city having a park board and a city civil engineer, the city plan  
4 commission consists of nine (9) members, as follows:

5 (1) One (1) member appointed by the city legislative body from  
6 its membership.

7 (2) One (1) member appointed by the park board from its  
8 membership.

9 (3) One (1) member or designated representative appointed by the  
10 city works board.

11 (4) The city civil engineer or a qualified assistant appointed by the  
12 city civil engineer.

13 (5) Five (5) citizen members, of whom no more than three (3)  
14 may be of the same political party, appointed by the city  
15 executive.

16 (b) ADVISORY. If a city lacks either a park board or a city civil  
17 engineer, or both, subsection (a) does not apply. In such a city or in any

EH 1050—LS 6510/DI 108+



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town, the municipal plan commission consists of seven (7) members, as follows:

(1) The municipal legislative body shall appoint three (3) persons, who must be elected or appointed municipal officials or employees in the municipal government, as members.

(2) The municipal executive shall appoint four (4) citizen members, of whom no more than two (2) may be of the same political party.

(c) AREA. To provide equitable representation of rural and urban populations, representation on the area plan commission is determined as follows:

(1) Seven (7) representatives from each city having a population of more than one hundred five thousand (105,000).

(2) Six (6) representatives from each city having a population of not less than seventy thousand (70,000) nor more than one hundred five thousand (105,000).

(3) Five (5) representatives from each city having a population of not less than thirty-five thousand (35,000) but less than seventy thousand (70,000).

(4) Four (4) representatives from each city having a population of not less than twenty thousand (20,000) but less than thirty-five thousand (35,000).

(5) Three (3) representatives from each city having a population of not less than ten thousand (10,000) but less than twenty thousand (20,000).

(6) Two (2) representatives from each city having a population of less than ten thousand (10,000).

(7) One (1) representative from each town having a population of more than two thousand one hundred (2,100), and one (1) representative from each town having a population of two thousand one hundred (2,100) or less that had a representative before January 1, 1979.

(8) Such representatives from towns having a population of not more than two thousand one hundred (2,100) as are provided for in section 210 of this chapter.

(9) Six (6) county representatives if the total number of municipal representatives in the county is an odd number, or five (5) county representatives if the total number of municipal representatives is an even number.

(d) METRO. The metropolitan development commission consists of ~~eleven (11)~~ **nine (9)** citizen members, as follows:

(1) ~~Five (5)~~ **Four (4)** members, of whom no more than ~~three (3)~~

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**two (2)** may be of the same political party, appointed by the executive of the consolidated city.

(2) Three (3) members, of whom no more than two (2) may be of the same political party, appointed by the legislative body of the consolidated city.

(3) Two (2) members, who must be of different political parties, appointed by the board of commissioners of the county.

~~(4) One (1) member who represents the township legislative bodies. The procedure for the township legislative bodies for appointing the member shall be established by an ordinance adopted by the legislative body of the consolidated city.~~

SECTION 2. IC 36-7-4-208, AS AMENDED BY P.L.173-2003, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 208. (a) ADVISORY. The county plan commission consists of nine (9) members, as follows:

(1) One (1) member appointed by the county executive from its membership.

(2) One (1) member appointed by the county fiscal body from its membership.

(3) The county surveyor or the county surveyor's designee.

(4) The county agricultural extension educator. However, if the county does not have a county agricultural extension educator, the county extension board shall select a resident of the county who is a property owner with agricultural interest to serve on the commission under this subdivision for a period not to exceed one (1) year.

(5) Five (5) members appointed in accordance with one (1) of the following:

(A) Four (4) citizen members, of whom no more than two (2) may be of the same political party. ~~and all~~ **Each of the four (4) of whom members** must be:

**residents (i) a resident of an unincorporated areas area of the county; or**

**(ii) an owner of real property located in whole or in part in an unincorporated area of the county;**

appointed by the county executive. Also one (1) township trustee, who must be a resident of an unincorporated area of the county **or an owner of real property located in whole or in part in an unincorporated area of the county**, appointed by the county executive upon the recommendation of the township trustees whose townships are within the jurisdiction of the county plan commission.

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(B) Five (5) citizen members, of whom not more than three (3) may be of the same political party. ~~and all~~ **Each of the five (5) of whom members** must be:

**residents (i) a resident of an unincorporated areas area of the county; or**

**(ii) an owner of real property located in whole or in part in an unincorporated area of the county;**

appointed by the county executive.

If a county executive changes the plan commission from having members described in clause (B) to having members described in clause (A), the county executive shall appoint a township trustee to replace the first citizen member whose term expires and who belongs to the same political party as the township trustee. Each member appointed to the commission is entitled to receive compensation for mileage at the same rate and the same compensation for services as a member of a county executive, a member of a county fiscal body, a county surveyor, or an appointee of a county surveyor receives for serving on the commission, as set forth in section 222.5 of this chapter.

(b) ADVISORY. The metropolitan plan commission consists of nine (9) members, as follows:

(1) One (1) member appointed by the county legislative body from its membership.

(2) One (1) member appointed by the second class city legislative body from its membership.

(3) Three (3) citizen members who ~~are residents of~~ **reside in an unincorporated areas area of the county or own real property located in whole or in part in an unincorporated area of the county** of whom no more than two (2) may be of the same political party, appointed by the county legislative body. One (1) of these members must be actively engaged in farming.

(4) Four (4) citizen members, of whom no more than two (2) may be of the same political party, appointed by the second class city executive. One (1) of these members must be from the metropolitan school authority or community school corporation and a resident of that school district, and the other three (3) members must be residents of the second class city.

(c) AREA. When there are six (6) county representatives, they are as follows:

(1) One (1) member appointed by the county executive from its membership.

(2) One (1) member appointed by the county fiscal body from its

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membership.

(3) The county superintendent of schools, or if that office does not exist, a representative appointed by the school corporation superintendents within the jurisdiction of the area plan commission.

(4) One (1) of the following appointed by the county executive:

(A) The county agricultural extension educator.

(B) The county surveyor or the county surveyor's designee.

(5) One (1) citizen member who is a resident of the unincorporated area of the county **or an owner of real property located in whole or in part in the unincorporated area of the county**, appointed by the county executive.

(6) One (1) citizen member who is a resident of the unincorporated area of the county **or an owner of real property located in whole or in part in the unincorporated area of the county**, appointed by the county fiscal body.

(d) AREA. When there are five (5) county representatives, they are the representatives listed or appointed under subsection (c)(3), (c)(4), (c)(5), and (c)(6) and:

(1) the county surveyor or the county surveyor's designee if the county executive appoints the county agricultural extension educator under subsection (c)(4); or

(2) the county agricultural extension educator if the county executive appoints the county surveyor under subsection (c)(4).

(e) AREA. The appointing authority may appoint an alternate member to participate on a commission established under section 204 of this chapter in a hearing or decision if the regular member it has appointed is unavailable. An alternate member shall have all of the powers and duties of a regular member while participating on the commission.

SECTION 3. IC 36-7-4-214 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 214. (a) ADVISORY. When a municipal plan commission exercises jurisdiction outside the incorporated area of the municipality as provided for in section 205 of the advisory planning law, the executive of the county in which the unincorporated area is located shall appoint two (2) additional citizen members to the municipal plan commission. The citizen members must:

(1) reside in the unincorporated area **or own real property located in whole or in part in the unincorporated area**; and

(2) not be of the same political party.

(b) ADVISORY. Initially, one (1) member under subsection (a)

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shall be appointed for a term of one (1) year and the other for a term of four (4) years. Thereafter, each appointment is for a term of four (4) years. The additional citizen members are entitled to participate and vote in all deliberations of the municipal plan commission.

(c) ADVISORY. If the unincorporated area referred to in subsection (a) lies in two (2) counties, the executive of each of those counties shall appoint one (1) of the additional citizen members. The executive of the county having the larger proportion of the unincorporated area shall appoint its member first, and the executive of the other county shall then appoint its member, who must not be of the same political party.

SECTION 4. IC 36-7-4-215 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 215. ADVISORY. In addition to the requirements of section 214 of this chapter, the executive of the county may also appoint as members of a town plan commission additional representatives **from who reside or own real property located in whole or in part in** the unincorporated jurisdictional area, if the executive believes the additional representation is justifiable. The number of appointments shall be determined as follows:

(1) Two (2) citizen members, if the population of the jurisdictional area appears to be at least fifty percent (50%) but not more than one hundred percent (100%) of the population of the town itself.

(2) Four (4) citizen members, if the population of the jurisdictional area appears to be greater than that of the town itself.

These additional members must have the same qualifications and are entitled to the same terms and privileges as prescribed for the additional members appointed under section 214 of this chapter.

SECTION 5. IC 36-7-4-216 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 216. (a) Each citizen member shall be appointed because of the member's knowledge and experience in community affairs, the member's awareness of the social, economic, agricultural, and industrial problems of the area, and the member's interest in the development and integration of the area.

(b) A citizen member may not hold other elective or appointive office in municipal, county, or state government, except in the case of an area plan commission membership on the school board, the park board, or the board of directors for public utilities or board of trustees for utilities created under IC 8-1-11.1.

(c) **Except as provided in subsection (d),** a citizen member must be a resident of the jurisdictional area of the plan commission.

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(d) A citizen member representing an unincorporated area of the county may reside in the unincorporated area or own real property located in whole or in part in the unincorporated area.

SECTION 6. IC 36-7-4-311, AS AMENDED BY P.L.165-2003, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 311. (a) ADVISORY. The advisory plan commission may appoint, prescribe the duties, and fix the compensation of such employees as are necessary for the discharge of the duties of the commission. This compensation must be in conformity with salaries and compensation fixed up to that time by the fiscal body of the municipality or county, as the case may be. The commission may contract for special or temporary services and any professional counsel.

(b) AREA. **Except as provided in subsection (c),** the area plan commission shall appoint an executive director for the planning department and fix the director's compensation. To be qualified for the position, the executive director must have training and experience in the field of planning and zoning. The commission may not give any consideration to political affiliation in the appointment of the executive director.

(c) AREA. **This subsection applies to a county that does not contain a second class city. When there is a vacancy in the position of executive director of the planning department, the area plan commission shall give to the county commissioners the name of an individual recommended for the position. The county commissioners shall appoint an executive director. The appointee is not required to be the individual recommended by the area plan commission. The county commissioners may remove the executive director. The county commissioners shall fix the executive director's compensation. To be qualified for the position, an individual must have training and experience in the field of planning and zoning. In appointing the executive director, the county commissioners may not give any consideration to the political affiliation of the applicant.**

SECTION 7. IC 36-7-4-902 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 902. (a) ADVISORY. Each division of the advisory board of zoning appeals consists of five (5) members as follows:

(1) Three (3) citizen members appointed by the executive of the municipality or county, of whom one (1) must be a member of the plan commission and two (2) must not be members of the plan commission.

(2) One (1) citizen member appointed by the fiscal body of the

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municipality or county, who must not be a member of the plan commission.

(3) One (1) member appointed by the plan commission from the plan commission's membership, who must be a county agricultural agent or a citizen member of the plan commission other than the member appointed under subdivision (1).

(b) ADVISORY. In each county having a metropolitan plan commission, subsection (a) does not apply. In such a county, each division of the advisory board of zoning appeals consists of five (5) members as follows:

(1) Two (2) members, of whom no more than one (1) may be of the same political party, appointed by the county legislative body.

(2) Three (3) members, of whom no more than two (2) may be of the same political party, appointed by the second class city executive. One (1) only of these members must be a member of the plan commission.

(c) AREA. When the area board of zoning appeals was established before January 1, 1984, as a seven (7) member board, the board consists of seven (7) members as follows:

(1) Two (2) citizen members appointed by the area plan commission from its membership, one (1) of whom must be a municipal representative and the other must be a county representative.

(2) Three (3) citizen members, who may not be members of any plan commission, appointed by the executive of the largest municipality in the county. However, if there are two (2) or more municipalities having a population of at least twenty thousand (20,000) in the county, the executive of the largest municipality shall appoint two (2) citizen members and the executive of the second largest municipality shall appoint one (1) citizen member. Furthermore, if there are no cities in the county participating in the commission, then the three (3) members appointed under this subdivision shall be appointed as follows:

(A) One (1) member appointed by the county executive.

(B) One (1) member appointed by the county fiscal body.

(C) One (1) member appointed by the legislative bodies of those towns participating in the commission.

(3) Two (2) citizen members, who may not be members of any plan commission, appointed by the county legislative body.

(d) AREA. Except as provided in subsection (c), each division of the area board of zoning appeals consists of five (5) members as follows:

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(1) One (1) citizen member appointed by the area plan commission from its membership.

(2) One (1) citizen member, who may not be a member of any plan commission, appointed by the executive of the largest municipality in the county participating in the commission.

(3) Two (2) citizen members, of whom one (1) must be a member of the area plan commission and one (1) must not be a member of any plan commission, appointed by the county legislative body.

(4) One (1) citizen member, who may not be a member of any plan commission, appointed by the executive of the second largest municipality in the county participating in the commission. However, if there is only one (1) municipality in the county participating in the commission, then the county legislative body shall make this appointment.

(e) METRO. Each division of the metropolitan board of zoning appeals consists of five (5) members as follows:

(1) Two (2) citizen members appointed by the executive of the consolidated city.

(2) Two (2) citizen members appointed by the legislative body of the consolidated city.

(3) One (1) citizen member, who may also be a member of the metropolitan development commission, appointed by the commission.

(f) METRO. The municipal board of zoning appeals for an excluded city consists of five (5) members as follows:

(1) Three (3) citizen members appointed by the legislative body of the excluded city.

(2) Two (2) citizen members, who may also be members of the metropolitan development commission, appointed by the commission.

(g) Whenever the zoning ordinance provides for a certain division of the board of zoning appeals to have limited territorial jurisdiction, it must also provide for that division to consist of members who are ~~at~~ residents of that limited territory **or, if the territory includes an unincorporated area of the county, are owners of real property located in whole or in part in the unincorporated area.** Those members shall be appointed in the same manner that is prescribed by subsection (a) for divisions of an advisory board of zoning appeals, but if the plan commission is unable to make its appointment in that manner, the appointment shall be made instead by the legislative body.

SECTION 8. IC 36-7-4-903, AS AMENDED BY P.L.216-1999, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2004]: Sec. 903. ADVISORY. (a) When a municipal plan commission exercises jurisdiction outside the incorporated area of the municipality as provided for in section 205 or 1208 of the advisory planning law, either:

(1) an additional division of the board of zoning appeals shall be established under section 901(b) of this chapter that will have territorial jurisdiction only in the unincorporated area and consist only of residents of the unincorporated area **or the owners of real property located in whole or in part in the unincorporated area;** or

(2) the municipal plan commission shall designate, as its appointment to the municipal board of zoning appeals under section 902(a)(3) of this chapter, one (1) of the two (2) citizen members who were appointed under section 214 of this chapter to the plan commission to represent the unincorporated area. The citizen member must reside in the unincorporated area ~~He~~ **or own real property located in whole or in part in the unincorporated area.** The citizen shall be appointed for a term of four (4) years. ~~He~~ **The citizen** is entitled to participate and vote in all deliberations of the municipal board of zoning appeals.

(b) Notwithstanding section 902(g) of this chapter, if the zoning ordinance provides for an additional division of the board of zoning appeals under subsection (a)(1), the ordinance may also provide for the appointment of one (1) or more members of that division by elected officials of the county or township.

SECTION 9. IC 36-7-4-905 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 905. (a) None of the members of a board of zoning appeals may hold other elective or appointive office, except as permitted by section 902 of this chapter, in municipal, county, or state government.

(b) **Subject to subsection (c),** a member must be a resident of the jurisdictional area of the board.

(c) **A member representing an unincorporated area of a county must reside in the unincorporated area or own real property located in whole or in part in the unincorporated area.**

SECTION 10. IC 36-7-5.1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 25. (a) A member of the joint district board of zoning appeals may hold no other elective or appointive office in municipal, county, or state government, except as permitted by IC 36-7-4-902.

(b) A member of the joint district board of zoning appeals must:

(1) be a resident of a county where a part of the joint district is

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1 located; or  
 2 (2) reside within ten (10) miles of the borders of the joint district;  
 3 or  
 4 (3) own real property located in whole or in part in the joint  
 5 district.  
 6 SECTION 11. IC 36-7-4-608.5 IS REPEALED [EFFECTIVE JULY  
 7 1, 2004].

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1050, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

MOSES, Chair

Committee Vote: yeas 13, nays 1.

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EH 1050—LS 6510/DI 108+



COMMITTEE REPORT

Madam President: The Senate Committee on Governmental Affairs and Interstate Cooperation, to which was referred House Bill No. 1050, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, delete lines 12 through 13, begin a new paragraph and insert:

"SECTION 2. IC 36-7-4-608.5 IS REPEALED [EFFECTIVE JULY 1, 2004].".

and when so amended that said bill do pass.

(Reference is to HB 1050 as printed January 30, 2004.)

RIEGSECKER, Chairperson

Committee Vote: Yeas 11, Nays 0.

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## SENATE MOTION

Madam President: I move that Engrossed House Bill 1050 be amended to read as follows:

Page 3, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 1. IC 36-7-4-208, AS AMENDED BY P.L.173-2003, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 208. (a) ADVISORY. The county plan commission consists of nine (9) members, as follows:

(1) One (1) member appointed by the county executive from its membership.

(2) One (1) member appointed by the county fiscal body from its membership.

(3) The county surveyor or the county surveyor's designee.

(4) The county agricultural extension educator. However, if the county does not have a county agricultural extension educator, the county extension board shall select a resident of the county who is a property owner with agricultural interest to serve on the commission under this subdivision for a period not to exceed one (1) year.

(5) Five (5) members appointed in accordance with one (1) of the following:

(A) Four (4) citizen members, of whom no more than two (2) may be of the same political party. ~~and at~~ **Each of the four (4) of whom members** must be:

~~residents~~ **(i) a resident of an unincorporated areas area of the county; or**

**(ii) an owner of real property located in whole or in part in an unincorporated area of the county;**

appointed by the county executive. Also one (1) township trustee, who must be a resident of an unincorporated area of the county **or an owner of real property located in whole or in part in an unincorporated area of the county**, appointed by the county executive upon the recommendation of the township trustees whose townships are within the jurisdiction of the county plan commission.

(B) Five (5) citizen members, of whom not more than three (3) may be of the same political party. ~~and at~~ **Each of the five (5) of whom members** must be:

~~residents~~ **(i) a resident of an unincorporated areas area of the county; or**

**(ii) an owner of real property located in whole or in part**

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**in an unincorporated area of the county;**

appointed by the county executive.

If a county executive changes the plan commission from having members described in clause (B) to having members described in clause (A), the county executive shall appoint a township trustee to replace the first citizen member whose term expires and who belongs to the same political party as the township trustee. Each member appointed to the commission is entitled to receive compensation for mileage at the same rate and the same compensation for services as a member of a county executive, a member of a county fiscal body, a county surveyor, or an appointee of a county surveyor receives for serving on the commission, as set forth in section 222.5 of this chapter.

(b) ADVISORY. The metropolitan plan commission consists of nine (9) members, as follows:

- (1) One (1) member appointed by the county legislative body from its membership.
- (2) One (1) member appointed by the second class city legislative body from its membership.
- (3) Three (3) citizen members who ~~are residents of~~ **reside in an unincorporated areas area** of the county **or own real property located in whole or in part in an unincorporated area of the county** of whom no more than two (2) may be of the same political party, appointed by the county legislative body. One (1) of these members must be actively engaged in farming.
- (4) Four (4) citizen members, of whom no more than two (2) may be of the same political party, appointed by the second class city executive. One (1) of these members must be from the metropolitan school authority or community school corporation and a resident of that school district, and the other three (3) members must be residents of the second class city.

(c) AREA. When there are six (6) county representatives, they are as follows:

- (1) One (1) member appointed by the county executive from its membership.
- (2) One (1) member appointed by the county fiscal body from its membership.
- (3) The county superintendent of schools, or if that office does not exist, a representative appointed by the school corporation superintendents within the jurisdiction of the area plan commission.
- (4) One (1) of the following appointed by the county executive:

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- (A) The county agricultural extension educator.
  - (B) The county surveyor or the county surveyor's designee.
  - (5) One (1) citizen member who is a resident of the unincorporated area of the county **or an owner of real property located in whole or in part in the unincorporated area of the county**, appointed by the county executive.
  - (6) One (1) citizen member who is a resident of the unincorporated area of the county **or an owner of real property located in whole or in part in the unincorporated area of the county**, appointed by the county fiscal body.
  - (d) AREA. When there are five (5) county representatives, they are the representatives listed or appointed under subsection (c)(3), (c)(4), (c)(5), and (c)(6) and:
    - (1) the county surveyor or the county surveyor's designee if the county executive appoints the county agricultural extension educator under subsection (c)(4); or
    - (2) the county agricultural extension educator if the county executive appoints the county surveyor under subsection (c)(4).
  - (e) AREA. The appointing authority may appoint an alternate member to participate on a commission established under section 204 of this chapter in a hearing or decision if the regular member it has appointed is unavailable. An alternate member shall have all of the powers and duties of a regular member while participating on the commission.
- SECTION 2. IC 36-7-4-214 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 214. (a) ADVISORY. When a municipal plan commission exercises jurisdiction outside the incorporated area of the municipality as provided for in section 205 of the advisory planning law, the executive of the county in which the unincorporated area is located shall appoint two (2) additional citizen members to the municipal plan commission. The citizen members must:
- (1) reside in the unincorporated area **or own real property located in whole or in part in the unincorporated area**; and
  - (2) not be of the same political party.
- (b) ADVISORY. Initially, one (1) member under subsection (a) shall be appointed for a term of one (1) year and the other for a term of four (4) years. Thereafter, each appointment is for a term of four (4) years. The additional citizen members are entitled to participate and vote in all deliberations of the municipal plan commission.
- (c) ADVISORY. If the unincorporated area referred to in subsection (a) lies in two (2) counties, the executive of each of those counties shall

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appoint one (1) of the additional citizen members. The executive of the county having the larger proportion of the unincorporated area shall appoint its member first, and the executive of the other county shall then appoint its member, who must not be of the same political party.

SECTION 3. IC 36-7-4-215 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 215. ADVISORY. In addition to the requirements of section 214 of this chapter, the executive of the county may also appoint as members of a town plan commission additional representatives ~~from~~ **who reside or own real property located in whole or in part in** the unincorporated jurisdictional area, if the executive believes the additional representation is justifiable. The number of appointments shall be determined as follows:

- (1) Two (2) citizen members, if the population of the jurisdictional area appears to be at least fifty percent (50%) but not more than one hundred percent (100%) of the population of the town itself.
- (2) Four (4) citizen members, if the population of the jurisdictional area appears to be greater than that of the town itself.

These additional members must have the same qualifications and are entitled to the same terms and privileges as prescribed for the additional members appointed under section 214 of this chapter.

SECTION 4. IC 36-7-4-216 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 216. (a) Each citizen member shall be appointed because of the member's knowledge and experience in community affairs, the member's awareness of the social, economic, agricultural, and industrial problems of the area, and the member's interest in the development and integration of the area.

(b) A citizen member may not hold other elective or appointive office in municipal, county, or state government, except in the case of an area plan commission membership on the school board, the park board, or the board of directors for public utilities or board of trustees for utilities created under IC 8-1-11.1.

(c) **Except as provided in subsection (d),** a citizen member must be a resident of the jurisdictional area of the plan commission.

(d) **A citizen member representing an unincorporated area of the county may reside in the unincorporated area or own real property located in whole or in part in the unincorporated area.**

SECTION 5. IC 36-7-4-902 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 902. (a) ADVISORY. Each division of the advisory board of zoning appeals consists of five

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(5) members as follows:

(1) Three (3) citizen members appointed by the executive of the municipality or county, of whom one (1) must be a member of the plan commission and two (2) must not be members of the plan commission.

(2) One (1) citizen member appointed by the fiscal body of the municipality or county, who must not be a member of the plan commission.

(3) One (1) member appointed by the plan commission from the plan commission's membership, who must be a county agricultural agent or a citizen member of the plan commission other than the member appointed under subdivision (1).

(b) ADVISORY. In each county having a metropolitan plan commission, subsection (a) does not apply. In such a county, each division of the advisory board of zoning appeals consists of five (5) members as follows:

(1) Two (2) members, of whom no more than one (1) may be of the same political party, appointed by the county legislative body.

(2) Three (3) members, of whom no more than two (2) may be of the same political party, appointed by the second class city executive. One (1) only of these members must be a member of the plan commission.

(c) AREA. When the area board of zoning appeals was established before January 1, 1984, as a seven (7) member board, the board consists of seven (7) members as follows:

(1) Two (2) citizen members appointed by the area plan commission from its membership, one (1) of whom must be a municipal representative and the other must be a county representative.

(2) Three (3) citizen members, who may not be members of any plan commission, appointed by the executive of the largest municipality in the county. However, if there are two (2) or more municipalities having a population of at least twenty thousand (20,000) in the county, the executive of the largest municipality shall appoint two (2) citizen members and the executive of the second largest municipality shall appoint one (1) citizen member. Furthermore, if there are no cities in the county participating in the commission, then the three (3) members appointed under this subdivision shall be appointed as follows:

(A) One (1) member appointed by the county executive.

(B) One (1) member appointed by the county fiscal body.

(C) One (1) member appointed by the legislative bodies of

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those towns participating in the commission.

(3) Two (2) citizen members, who may not be members of any plan commission, appointed by the county legislative body.

(d) AREA. Except as provided in subsection (c), each division of the area board of zoning appeals consists of five (5) members as follows:

(1) One (1) citizen member appointed by the area plan commission from its membership.

(2) One (1) citizen member, who may not be a member of any plan commission, appointed by the executive of the largest municipality in the county participating in the commission.

(3) Two (2) citizen members, of whom one (1) must be a member of the area plan commission and one (1) must not be a member of any plan commission, appointed by the county legislative body.

(4) One (1) citizen member, who may not be a member of any plan commission, appointed by the executive of the second largest municipality in the county participating in the commission. However, if there is only one (1) municipality in the county participating in the commission, then the county legislative body shall make this appointment.

(e) METRO. Each division of the metropolitan board of zoning appeals consists of five (5) members as follows:

(1) Two (2) citizen members appointed by the executive of the consolidated city.

(2) Two (2) citizen members appointed by the legislative body of the consolidated city.

(3) One (1) citizen member, who may also be a member of the metropolitan development commission, appointed by the commission.

(f) METRO. The municipal board of zoning appeals for an excluded city consists of five (5) members as follows:

(1) Three (3) citizen members appointed by the legislative body of the excluded city.

(2) Two (2) citizen members, who may also be members of the metropolitan development commission, appointed by the commission.

(g) Whenever the zoning ordinance provides for a certain division of the board of zoning appeals to have limited territorial jurisdiction, it must also provide for that division to consist of members who are ~~all~~ residents of that limited territory **or, if the territory includes an unincorporated area of the county, are owners of real property located in whole or in part in the unincorporated area.** Those

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members shall be appointed in the same manner that is prescribed by subsection (a) for divisions of an advisory board of zoning appeals, but if the plan commission is unable to make its appointment in that manner, the appointment shall be made instead by the legislative body.

SECTION 6. IC 36-7-4-903, AS AMENDED BY P.L.216-1999, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 903. ADVISORY. (a) When a municipal plan commission exercises jurisdiction outside the incorporated area of the municipality as provided for in section 205 or 1208 of the advisory planning law, either:

(1) an additional division of the board of zoning appeals shall be established under section 901(b) of this chapter that will have territorial jurisdiction only in the unincorporated area and consist only of residents of the unincorporated area **or the owners of real property located in whole or in part in the unincorporated area;** or

(2) the municipal plan commission shall designate, as its appointment to the municipal board of zoning appeals under section 902(a)(3) of this chapter, one (1) of the two (2) citizen members who were appointed under section 214 of this chapter to the plan commission to represent the unincorporated area. The citizen member must reside in the unincorporated area **He or own real property located in whole or in part in the unincorporated area. The citizen** shall be appointed for a term of four (4) years. ~~He~~ **The citizen** is entitled to participate and vote in all deliberations of the municipal board of zoning appeals.

(b) Notwithstanding section 902(g) of this chapter, if the zoning ordinance provides for an additional division of the board of zoning appeals under subsection (a)(1), the ordinance may also provide for the appointment of one (1) or more members of that division by elected officials of the county or township.

SECTION 7. IC 36-7-4-905 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 905. (a) None of the members of a board of zoning appeals may hold other elective or appointive office, except as permitted by section 902 of this chapter, in municipal, county, or state government.

(b) **Subject to subsection (c),** a member must be a resident of the jurisdictional area of the board.

(c) **A member representing an unincorporated area of a county must reside in the unincorporated area or own real property located in whole or in part in the unincorporated area.**

SECTION 8. IC 36-7-5.1-25 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 25. (a) A member of the joint district board of zoning appeals may hold no other elective or appointive office in municipal, county, or state government, except as permitted by IC 36-7-4-902.

(b) A member of the joint district board of zoning appeals must:

(1) be a resident of a county where a part of the joint district is located; ~~or~~

(2) reside within ten (10) miles of the borders of the joint district;   
or

(3) **own real property located in whole or in part in the joint district."**

Renumber all SECTIONS consecutively.

(Reference is to EHB 1050 as printed February 20, 2004.)

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#### SENATE MOTION

Madam President: I move that Engrossed House Bill 1050 be amended to read as follows:

Page 3, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 2. IC 36-7-4-311, AS AMENDED BY P.L.165-2003, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 311. (a) ADVISORY. The advisory plan commission may appoint, prescribe the duties, and fix the compensation of such employees as are necessary for the discharge of the duties of the commission. This compensation must be in conformity with salaries and compensation fixed up to that time by the fiscal body of the municipality or county, as the case may be. The commission may contract for special or temporary services and any professional counsel.

(b) AREA. **Except as provided in subsection (c),** the area plan commission shall appoint an executive director for the planning department and fix the director's compensation. To be qualified for the position, the executive director must have training and experience in the field of planning and zoning. The commission may not give any consideration to political affiliation in the appointment of the executive director.

(c) AREA. **This subsection applies to a county that does not contain a second class city. When there is a vacancy in the position of executive director of the planning department, the area plan commission shall give to the county commissioners the name of an**

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individual recommended for the position. The county commissioners shall appoint an executive director. The appointee is not required to be the individual recommended by the area plan commission. The county commissioners may remove the executive director. The county commissioners shall fix the executive director's compensation. To be qualified for the position, an individual must have training and experience in the field of planning and zoning. In appointing the executive director, the county commissioners may not give any consideration to the political affiliation of the applicant."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1050 as printed February 20, 2004.)

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